

12-29-91

1

IN THE CIRCUIT COURT

FOR THE TWENTIETH JUDICIAL CIRCUIT OF ILLINOIS

ST. CLAIR COUNTY, ILLINOIS

CHARLES KUEPER and PATRICIA KUEPER,
Individually, and PATRICIA KUEPER
As Mother and Next Friend of
JEFFREY KUEPER,

Plaintiffs,

-vs-

No. 91-L-734

R.J.R., INC., R. J. REYNOLDS
TOBACCO CO., and REESE DRUGS
INC.,

Defendants.

Deposition of HARRY L. KELLEY, taken for discovery
purposes, at the instance of the Plaintiff, before Kathy J.
Sullivan, CSR, RPR and Notary Public, on the 18th day of
December, 1991, at the hour of 9:00 o'clock a.m., at 600
Myers Building, Springfield, Illinois, pursuant to notice.

APPEARANCES:

COOK, SHEVLIN, KEEFE, YSURSA,
BRAUER & BARTHOLOMEW, by
MR. BRUCE N. COOK
Attorney at Law
12 West Lincoln Street
Belleville, Illinois 62220

on behalf of the Plaintiff;

CP001663

(89)

1 APPEARANCES: (Cont'd)

2 JONES, DAY, REVIS & POGUE, by
3 MR. PAUL G. CRIST
4 Attorney at Law
Northpoint, 901 Lakeside Avenue
Cleveland, Ohio 44114

5 on behalf of Defendant R.J. Reynolds;

6 DONOVAN, ROSE, NESTER & SZEWCZYK, by
7 MR. MICHAEL J. NESTER
8 Attorney at Law
8 East Washington Street
Belleville, Illinois 62220

9 on behalf of the Defendant.

10 GIFFIN, WINNING, COHEN & BODEWES, by
11 MS. CAROL FINES
MR. NATHAN MADDOX
12 Attorneys at Law
600 Myers Building
Springfield, Illinois

13 on behalf of the Deponent.

14
15 HARRY L. KELLEY

16 called as a witness herein, having been first duly sworn,
17 was examined and testified as follows:

18 EXAMINATION BY

19 MR. COOK:

20 Q. Would you state your name and address, sir?

21 A. My name is Harry L. Kelley, I reside at [DELETED]

22

23 Q. Mr. Kelley, how old a man are you, sir?

24 A. 59 years old.

C-001664

1 Q. And how long have you lived in Springfield?

2 A. I came up here in 1967.

3 Q. Where did you come from?

4 A. Hillsboro, Illinois.

5 Q. What did you do in Hillsboro?

6 A. I was in the wholesale candy and tobacco --
7 wholesale candy and grocery business, worked for my folks,
8 same type of people that I represent today.

9 Q. What was the name of that business, Mr. Kelley?

10 A. Kelley Food Service.

11 Q. What did you distribute, wholesale products to
12 retail outlets?

13 A. We called on the wholesale -- or I'm sorry, the
14 retail mom and pop jot em down stores we use to have in
15 those days where you bought stuff on credit before Kroger
16 and Tri-City and A & P, the chains.

17 Q. What do you do now, Mr. Kelley?

18 A. I'm the Executive Director of the Illinois
19 Association of Candy and Tobacco Distributors.

20 Q. Is that a corporation, sir?

21 A. Yes, non-for-profit corporation, yes.

22 Q. Does the Illinois Association of Candy and
23 Tobacco Distributors belong to any national organizations?

24 A. No, sir.

0001665

1 Q. Are you a registered lobbyist, sir?

2 A. Yes.

3 Q. Does the -- do you have counterparts in other
4 states like, for example, is there a Missouri Association
5 of Candy and Tobacco Distributors?

6 A. Yes.

7 Q. And an Idaho?

8 A. I think there are 37 states, sir, that have
9 these.

10 Q. Do you ever meet with your counterparts from the
11 other states?

12 A. Yes.

13 Q. How frequently do you do that?

14 A. Well, there are meetings that are held twice a
15 year, but not all of them make those meetings.

16 Q. Are they held at Vail?

17 A. Been to Vail one time for the Illinois Department
18 of Revenue, I'm not a skier.

19 Q. When the meetings are held whose -- what agency
20 sponsor them?

21 A. The National Candy Wholesalers Association. And
22 it use to be National Association of Tobacco
23 Distributors. So that you understand that there use to be
24 two organizations and they have combined it into one. Use

1 to have four meetings and now we have two.

2 Q. What does a lobbyist do, Mr. Kelley?

3 A. My job as a lobbyist for the Illinois Association
4 of Candy and Tobacco Distributors is to watch legislation
5 that's introduced that pertains to things that I would know
6 that would affect my distributors.

7 Q. Do you testify at committee hearings from time to
8 time?

9 A. Yes, I have done that numerous times. And I have
10 testified as a representative of the Illinois Association
11 of Candy and Tobacco Distributors. That's the only people
12 I testify for.

13 Q. Have you ever testified before any other agency
14 other than legislative committees?

15 A. I would have to think. I have met with a group
16 of people from the University of Illinois that were
17 nutrition experts on candy, that was not a legislative
18 group. I wouldn't call this testifying, but I have met
19 with other state associations like mine to tell them the
20 programs that we do. But specifically what are you looking
21 for? I mean if you --

22 Q. Have you testified before FTC, trade
23 commissions --

24 A. No.

0001667

1 Q. -- anything like that?

2 A. No.

3 Q. I know you sponsor an annual golf tournament, I
4 understand.

5 A. That's right, sir.

6 Q. And Jim McPike plays in it.

7 A. And Jim's brother and his crew, yes.

8 Q. That's who I got your name from, Mr. McPike.

9 You can thank him, if you want.

10 A. I figured that.

11 Q. Did you take any part in the tort reform --

12 A. No, that is not under my realm of
13 responsibility.

14 Q. I'm given to understand that you have some type
15 of relationship with the Tobacco Institute?

16 A. Yes.

17 Q. Okay. How long have you had a relationship with
18 the Tobacco Institute?

19 A. Since the day I came here.

20 Q. Were they already a portion of this --

21 A. Before I came, yes.

22 Q. Do you use tobacco?

23 A. No, sir.

24 Q. Have you ever?

CP-001668

1 do you play golf?

2 A. Yeah, a bad game of golf. But I enjoy playing
3 with Jim.

4 Q. With whom from the Tobacco Institute do you
5 interface or correspond?

6 A. There's a gentleman by the name of Bill Trisler,
7 who is the regional vice-president, I think is his title,
8 from Indianapolis.

9 Q. Are they a portion of the corporation the
10 Illinois Association of Candy --

11 A. No, sir --

12 Q. -- and Tobacco Distributors?

13 A. No, sir, have nothing to do with us whatsoever.

14 Q. Let -- maybe I should ask you a little bit about
15 that. And I have assured Mrs. Fines' partner that I'm
16 going to stay out of your business as much as I can. And
17 maybe they will make me stay out of it even more than I
18 want to. Who are -- when you use the term tobacco
19 distributors, are you talking about wholesale distributors,
20 like --

21 A. Weekey.

22 Q. Weekey Wholesale. I was going to say Weekey
23 before you said it?

24 A. One of my biggest members.

CP-001670

1 Q. So you know Wayne Weekey. Do you know him?

2 A. Better than anybody in this room. Absolutely.

3 Wayne was one of the gentlemen that hired me.

4 Q. Well, I'm thinking about suing him in this case.

5 I have been deliberating because my kids went to school
6 with his kids.

7 A. I represent the distributor who buys the product
8 from the manufacturer, buys the stamps from the State of
9 Illinois, this is just tobacco, affixes the stamp, collects
10 the tax, and we sell them to the Walgreen, the Osco, I mean
11 my distributors do. I have nothing to do with sales
12 whatsoever.

13 Q. Do you have any relationship with the individual
14 tobacco manufacturers such as Philip Morris or --

15 A. Oh, yes.

16 Q. Would your relationship with them be as a member
17 of the Tobacco Institute, is that --

18 A. Part of it, yes.

19 Q. Maybe I will go back -- I think I understand the
20 tobacco distributors. I will go back to the Tobacco
21 Institute. This Mr. Trisler from Indianapolis, do you
22 receive publications from him?

23 A. Yes.

24 Q. What kind of publications do you receive?

C-001672

1 A. Well, he sends me a letter like if he's been here
2 if there's something that comes out of the institute that
3 -- to the people that are interested in their causes. It
4 could -- I get notices from them in Washington on what's
5 going on on Capitol Hill, on Federal legislation, and then
6 they send us a bulletin like what's been introduced in all
7 the other types of states on state activities.

8 Q. Then if I understand correctly, do you charge
9 them hourly for your time, or they just contribute a
10 certain amount of money to the --

11 A. They contribute to our association. I am not an
12 employee of the institute. I do not draw a salary from the
13 institute.

14 Q. You draw your salary from the association?

15 A. From the wholesalers. I have never drawn a
16 paycheck from anybody but the tobacco association.

17 Q. Just so that I understand, that the -- do you
18 have a short name that you call your group so --

19 A. IATCD.

20 Q. IATCD.

21 A. And that stands for the Illinois Association of
22 Candy and Tobacco Distributors.

23 Q. So you call it IATCD?

24 A. No, IATCD, or may answer the phone Tobacco

C-001872

1 Association, Candy and Tobacco Association, depends.

2 Q. Well, at the Candy and Tobacco Association, or
3 IATCD, whatever, how many employees do you have?

4 A. I have myself, I have two girls that work for me
5 and my son-in-law Peter Helpin is a man that helps me lobby
6 on various degrees. Pete handles the stuff in Chicago and
7 Cook County. I know you know him.

8 Q. I talked to him yesterday. Well, I'll be nice
9 to you. I was going to be nice to you anyway. Did he know
10 I was going to take your deposition?

11 A. Oh yes.

12 Q. Well that son of a bitch, I was just talking to
13 him yesterday, he is on Clinton's, Governor Clinton's
14 campaign team. He is his Illinois manager. Well, I'll be
15 darned, I might take Pete's deposition too.

16 So you actually get your salary, I assume, from this
17 not-for-profit corporation?

18 A. That's the only salary I draw.

19 Q. Right. But you say you are paid by the
20 wholesalers, I'm just trying to straighten this out.
21 Technically the wholesalers would contribute money for --
22 on some basis to the corporation, the corporation in turn
23 pays your salary?

24 A. That's right, sir, but that is not the only

C-004673

1 source of revenue from the distributors.

2 Q. Right. Another source of revenue in the
3 corporation, a not-for-profit corporation, is money paid in
4 by the Tobacco Institute?

5 A. Yes.

6 Q. All right. Wayne Weekey, or Weekey Wholesale,
7 they wholesale every damn thing, you know, not only candy
8 and tobacco, but all types of and sundries --

9 A. Health and beauty aids, groceries, anything
10 that's in convenience stores, our people sell.

11 Q. Okay. So you're not limited to candy and
12 tobacco, you're really retail wholesale?

13 A. Any type of legislation that could have to do
14 with tax on junk food, you know, workmen's comp,
15 unemployment, marital leave, anything that would affect my
16 distributors is the type of legislation that I -- just to
17 name a few of them.

18 Q. Okay. Now, other than your wholesalers and the
19 Tobacco Institute, are there any other sources of revenue
20 for your association?

21 A. Yes.

22 Q. Do they have any relationship with tobacco?

23 A. Yes, they do have.

24 Q. Okay. Could you -- are they tobacco companies?

1 Like does --

2 A. There is a contract between the Association and
3 the Brown and Williamson Tobacco Company. There is a
4 contract between the Association and the Smokeless Tobacco
5 Council. There is a contract between the Association and
6 the Cigar Association of America. Contract or letter of
7 understanding, you know, whatever --

8 Q. How about with R.J.R.? R.J. Reynolds?

9 A. No, sir.

10 Q. Have you ever?

11 A. No, sir.

12 Q. Have you ever --

13 A. No, let me explain that to you. The tobacco
14 industry is funded, I don't want to --

15 Q. I understand that.

16 A. But for me or my association to contract that is
17 like with Brown and Williamson with R.J. Reynolds, so no,
18 sir, we don't.

19 Q. Brown and Williamson is also a member of the
20 Tobacco --

21 A. No, they are not. That's the reason we have a
22 contract with them. They use to be but withdrew because it
23 was the big two and little four.

24 Q. What cigarettes to Brown and Williamson make?

1 A. Kool, Rawley. Kool is their big one. And let
2 me clarify that, they have the overseas rights to Kent,
3 Lucky Strikes. And those rights for this country are owned
4 by a different company, but they own those overseas. They
5 make one of their big cigarettes is called -- it is a
6 women's cigarette. It is a real thin one.

7 Q. Virginia Slims?

8 A. No, that's Philip Morris.

9 Q. What do you smoke?

10 MS. FINES: Don't touch the stuff.

11 Q. Do you drink?

12 MS. FINES: That I don't disclose.

13 Q. You're not under oath, you can go ahead and lie
14 if you want. Who would you say is the -- if you had to
15 look at a legislative person in the House in the State of
16 Illinois, who is the most vocal legislature -- legislator
17 who is anti-tobacco?

18 A. Gordy Rock out of Bloomington, Representative
19 Gordon Rock. One of many.

20 Q. Who -- is there any leader who is particularly --
21 in the House who is particularly anti-tobacco? What's that
22 lady's name from Chicago who is --

23 A. Barbara Flynn Curry.

24 Q. Yeah, you would think that Barbara --

C-001676

1 A. Yeah, she is pretty anti and is a heavy smoker.

2 Q. I know that. But it's a combination of many of
3 them. I mean for them to say who is the ring leader --
4 who's the ring leader. How about in the Senate?

5 A. He is the Lieutenant Governor now, he is gone.

6 Q. Ryan?

7 A. No, Bob Kustra. I've got to really think.

8 Collins from Chicago, black lady, is pretty anti. But it
9 depends on the issue.

10 Q. Okay. Let's -- do -- does the Candy and Tobacco
11 Association, for want of another term, contribute money to
12 the campaign funds of legislators?

13 A. No, sir, we do not have a pact. Never have had.

14 Q. You don't attend fund raisers for --

15 A. Oh, yes.

16 Q. But you do that individually?

17 A. That is done by individual distributors usually
18 from the area that they represent. For in other words, if
19 Monroe Flynn has a fund raiser, Wayne Weekey will make a
20 contribution to him or somebody like that. But to be
21 explicit, there has never been a check written from this
22 association to a candidate. We cannot do that as a
23 non-for-profit organization. Now let me clarify that to a
24 degree, and I want you to understand this, Bruce.

1 Q. Okay.

2 A. Jim Edgar was a speaker at my convention two
3 years ago here in Springfield. We made a contribution to
4 his favorite charities, and those checks were written out
5 to like some Methodist church. I mean we gave them to Jim
6 and he gave them to the charities.

7 Q. He is a non-smoker, isn't he?

8 A. Yes.

9 Q. When he was in the house was he anti-tobacco?

10 A. No, Jim wasn't. Clarify that, there's so many
11 issues about tobacco, he was not real strong in support of
12 smoking restrictions. He was absolutely opposed to taxes
13 on the product.

14 Q. With respect to the Tobacco Institute, do they
15 contribute money to the campaign funds in Illinois of
16 legislators?

17 A. They do.

18 Q. How is that done? Or do you know?

19 A. They have asked different people, and I have been
20 one of them, who I might think has listened to our cause
21 and has a fund raiser that they could -- and I have been
22 asked and I have said certain people that I've worked with.

23 Q. Do you personally keep -- without asking you what
24 they give, do you keep records of what is given?

C-001578

1 A. No, sir, I do not.

2 Q. Do they inform you, the Tobacco Institute, of
3 what they give?

4 A. They will normally give me a list of these
5 contributions have been made to congressmen, and I look at
6 them and pitch them. I don't keep them.

7 Q. Would they inform you about our congressional
8 delegation as well as our state delegation?

9 A. Uh-huh.

10 Q. Do you lobby our congressional delegation in
11 Illinois?

12 A. Technically, no, but yes, I do. I go out there
13 once a year for a day in Washington when they bring in all
14 the distributors all over the country, and I meet with the
15 Illinois delegation and, you know, Bruce, hell they are all
16 in the legislature. I don't know.

17 Q. I wonder by McPike wouldn't tell me you were Pete
18 Helper's father-in-law. I'll bet he thought that was
19 funny. What about Rock, Pete use to work for Rock, was
20 Rock anti or pro-smoking?

21 A. Phil was anti-tax and still is. When it came to
22 the Clean Indoor Air Act that we passed, oh four years ago,
23 Phil said guys we are going to have something, let's try to
24 sit down, and you know as well as I do the art of good

1 government is the art of compromise.

2 And we set down at that time with the Cancer Society,
3 the Illinois Lung Association, Chicago Lung Association,
4 Illinois Heart, Chicago Heart Association, and worked out a
5 Clean Indoor Air Act that there was some things we didn't
6 like, and some things they didn't like, but they knew if we
7 didn't support it there wasn't going to be one, and we have
8 one.

9 Q. Do you understand those associations that you
10 named in Illinois to be generally anti-smoke, cigarette
11 smoke?

12 A. The Cancer Society, yes, oh, sure.

13 Q. Is there any association other than your own in
14 Illinois that you're aware of that is pro-cigarette
15 smoking?

16 A. Retail merchants.

17 Q. Okay.

18 A. You know, the --

19 Q. Who is their lobbyist, what's his name?

20 A. Dave Vite. The Illinois State Chamber on some of
21 the issues are with us, some of them they're against us.
22 Same with the Illinois Manufacturers Association, Illinois
23 Railroad Association, they haul a lot of the product.

24 Q. But it depends on the issue?

C-001630

1 A. Sure.

2 Q. With respect to regulation of portions of the
3 cigarette industry, has there ever been an attempt to
4 either ban or make it difficult for minors to use cigarette
5 machines in the State of Illinois?

6 A. Absolutely.

7 Q. When is the first time that you remember that
8 there was an attack on cigarette machines?

9 A. I'm going to say maybe seven years ago, you start
10 hearing some rumbling. At that time I don't know how quick
11 after that we supported legislation that stated that there
12 had to be an emblem on the machine that says you must be 18
13 years old to buy this.

14 Q. When is the first time that you recall that
15 Illinois made it illegal for minors -- selling cigarettes
16 to minors?

17 A. Before my time when I came here it was in the
18 statute that you had to be 18 years old to buy cigarettes,
19 unless you had written permission from your parents. And
20 we supported that legislation two years ago to strike that
21 from the statutes. And for this reason; you're a retailer,
22 and this young lady comes in with a note from her daddy and
23 says sell Mary Jane a package of cigarettes. How do you
24 know that her daddy wrote it, that she didn't? So we -- we

1 took that off the books. We supported that completely.

2 Q. Did you oppose efforts to take it off the books
3 earlier?

4 A. Never was -- never was opposed. The retail
5 merchants, who I have mentioned, came to us and said Bud we
6 are going to introduce this because we have a problem. We
7 said we are for it, we will help you.

8 Q. What about with cigarette machines, has anyone
9 tried to make proposals in the legislature that cigarette
10 machines be banned?

11 A. I can't honestly say whether it's ever been
12 introduced in the legislature, but I know it has in the
13 City of Chicago. And we worked with the City of Chicago,
14 Alderman Burke, in working out a proposal that said
15 cigarette machines can only be in a private club or in a
16 bar or a tavern where children can't go. In other words,
17 you no longer can have a cigarette machine on an El
18 station. You can't have one in a restaurant.

19 Q. You can't have one in a filling station?

20 A. No.

21 Q. You can in the remainder of the State of Illinois
22 though?

23 A. It is -- yes.

24 Q. Would you support legislation to ban cigarette

1 machines from filling station?

2 A. Oh, certainly, but there's not -- most all gas
3 stations sell cigarettes over the counter. But to answer
4 your question specifically, the distributors would support
5 that. And that's who I represent, you know.

6 Q. So to the best of your knowledge other than that
7 there hasn't been any active effort in the State of
8 Illinois to remove cigarette machines from stores where
9 minors might have access to them?

10 A. Honestly I don't think so. And I'm on top of
11 that. But you know, sometimes a bill might get introduced
12 and it -- but to my knowledge, no.

13 Q. Do you know what the position of the Illinois --
14 I mean of the Tobacco Institute on removing cigarette
15 machines from filling stations and drug stores?

16 A. The Tobacco Institute supported the Chicago
17 ordinance that was passed that put restrictions on
18 cigarette machines to try to keep them from minors.

19 Q. Okay. Have they ever opposed any regulation of
20 cigarette machines to your knowledge?

21 MS. FINES: Are you talking about in this state
22 or --

23 Q. Anywhere.

24 MS. FINES: If you know.

0001683

3 Q. If the Tobacco Institute had supported that in
4 Chicago, has there been any discussion about supporting a
5 similar bill for the State of Illinois?

6 A. Yes.

7 Q. What types of regulations during your tenure have
8 been offered with respect to cigarette smoke that you have
9 opposed? Other than tax considerations?

10 MS. FINES: Are you talking about --

11 A. Could you be a little more specific?

12 Q. Sure. I mean some of the things that I know
13 about on the national level, they have banned cigarette
14 smoke from smoking on airplanes, the Tobacco Institute, to
15 my understanding, rigorously opposed that.

16 | A. Yes.

17 Q. Okay. Now I'm taking that to the state level,
18 and I realize that in the legislature that sometimes you
19 get some fairly crazy proposals from people. Have there
20 been proposals to ban the sale of cigarettes completely in
21 the State of Illinois that you have opposed?

22 A. To answer that question, no, because it has never
23 come up. But there was a bill that was introduced to ban
24 the sale of cigarettes in state owned or leased buildings.

1 And we opposed that because the blind people run those --
2 you know, the Capitol Building, they run that, and it's a
3 big part of their income. That bill never got out of
4 committee and was never heard in committee.

5 Q. Have there ever been any proposals in the State
6 of Illinois to limit or restrict the ability of cigarette
7 companies to advertise their products?

8 A. Oh, yes.

9 Q. Have you generally opposed those?

10 A. We have because we felt that, you know, a good
11 law is a law that's enforceable. And that would be very
12 difficult. So -- and I'm going to give you this
13 information because I think it is very important.

14 We set down with the previous governor and a task
15 force was appointed to come up with a "code of conduct"
16 that's very similar to the one, the national code of
17 conduct. And I am on that task force and have worked real
18 -- many hours on trying to come up with a code that we felt
19 that the advertising and the billboard companies would, you
20 know, correct themselves. Because particularly in the City
21 of Chicago is where there's a big problem with that. And
22 that's still in the working and we would absolutely support
23 that.

24 Q. Did you -- were you aware of -- I can't remember

1 the name of the cigarette, I think maybe it was Uptown, and
2 there was a big controversy about it because it was
3 directed towards or at least appeared to be marketed
4 towards black people in urban areas. And the doctor,
5 whatever his name is, the Secretary of Health and Human
6 Services. Dr. Sullivan, raised cane about it. Were you
7 involved in that at all?

8 A. No, sir, not at all.

9 Q. You're familiar with that controversy?

10 A. In this business, sure you are.

11 Q. Do you receive the Tobacco Institute newsletter?

12 A. I don't know that they really have a newsletter.
13 I receive different literature from them at times. But for
14 them to like -- you know, they put out a statement that
15 what's happened this week in Washington. Now, if you want
16 to call that a newsletter, sure we do. This is what's
17 happened in the states, sure, I receive that.

18 Q. Do you keep a file on legislation that you are
19 concerned with with respect to tobacco?

20 A. Oh, certainly. And I keep files that -- you
21 know, on all the other subject matter that I'm interested
22 in.

23 Q. With respect -- you know, we talked just a bit
24 about people who are concerned with limitations or bans on

1 advertising for cigarette smoke. When is the first time
2 that you were aware in the legislature that there was an
3 attempt to restrict the tobacco industry's first amendment
4 rights in that regard?

5 A. Well, that went back originally when they took it
6 off of television.

7 Q. That was 19 --

8 A. Yeah. And I wasn't here then but I was aware of
9 it. I started here in '75. So there's been something
10 going on all the time about that.

11 Q. Well, I'm talking about in the State of Illinois
12 where you would have had a role in it? I can see somebody
13 like Barbara Curry, for example --

14 A. To the best of my recollection I'm going to say
15 it's been in the last five or six years that -- now I may
16 be wrong, it might be six or seven, it may be --

17 Q. Sure.

18 A. But in that neighborhood. When these first
19 started coming.

20 Q. Who would -- who in the legislature do you recall
21 that was responsible for this starting?

22 A. Senator Collins was one of the first.

23 Q. Is that Cordis Collins?

24 A. Yes. And she comes with that almost every year.

1 Q. She's the lady I'm looking for then. I know her,
2 she was on the state central committee with me. How about
3 in the House, anybody in the House that you can recall?

4 A. I don't know whether John Dunn from Decatur has
5 introduced that or not, but he is really the -- you asked
6 me a question earlier, who was one of the lead chargers
7 against tobacco, I forgot that, John Dunn, Democrat from
8 Decatur. But I think John has introduced advertising. And
9 Senator John Manihevits has introduced a bill on
10 advertising which we agreed to. It had to do with the
11 warning label on smokeless tobacco. And I said John, we
12 can support that but as you know there's a Federal law that
13 says that this is what it has to say on the advertising,
14 and we will write in Illinois exactly like that, and
15 support you in committee on the floor. And we worked that
16 agreement out and said sure.

17 Q. When you say smokeless tobacco, is that chewing
18 tobacco and snuff --

19 A. Yes.

20 Q. -- as opposed to Premiere. Are you familiar with
21 the Premiere project on cigarettes?

22 A. Yes.

23 Q. What's your familiarity with that?

24 A. They test marketed in St. Louis market and they

1 test marketed it in Arizona.

2 Q. They did. I gather that people didn't like it?
3 Is that --

4 A. I guess that's what happened.

5 Q. I'm always in the test market for new beer. I
6 always try to get close.

7 A. And the reason I know about it is I had
8 distributors that had that product.

9 Q. When -- when a bill would come up that -- or even
10 people started having committee hearings about regulations
11 of any kind on tobacco, would you correspond with this
12 gentleman from Indianapolis?

13 A. Oh certainly, absolutely.

14 Q. You say Cordis Collins is at it again, here's a
15 copy of her bill?

16 A. Yes. See my job is to keep them informed as to
17 what is introduced, when the hearings are, what's going on,
18 who's in the -- on the committees.

19 Q. With respect to what information that you get
20 from them, have they ever suggested to you that tobacco
21 does not cause lung cancer?

22 A. No, sir.

23 Q. Have they suggested to you that tobacco -- have
24 they suggested to you, the Tobacco Institute, the use of

1 cigarettes does cause lung cancer?

2 A. No, sir.

3 Q. Do you think that smoking cigarettes causes lung
4 cancer?

5 A. I'm not a doctor. I have read, as well as you
6 have, all of this information. I don't have a strong
7 opinion, no, sir.

8 Q. One way or another?

9 A. No, sir.

10 Q. Do -- are you -- that question, are you regularly
11 asked that in your lobbying activities?

12 A. From some of the heavy, the John Dunn may jab me
13 a little bit about it, or chide me about it, or Gordy Rock.
14 But I don't think I have ever been asked that question
15 directly in a legislative hearing.

16 Q. Has anybody on behalf of the tobacco industry or
17 institute come here and assisted you in lobbying or --

18 A. Certainly.

19 Q. Who?

20 MS. FINES: Well, wait a minute. At this time
21 I'm going to assert an objection based on the first
22 amendment right of this client to petition the government
23 for redress. I don't think this client is required to
24 specify all the contacts he has with his particular

1 clients in pursuit of that lobbying activity. So I will
2 instruct him not to disclose particular people with whom he
3 has dealt on particular issues.

4 Q. Let me ask you this; have people from the Tobacco
5 Institute come here?

6 A. Yes.

7 Q. And who are they? Are you going to raise your
8 objection again.

9 MS. FINES: He can speak generally as to persons
10 with whom he has had contact at the association, but if you
11 are asking him to specifically identify persons who have
12 dealt with him on a particular issue or have discussed with
13 him a particular objective, I instruct him not to discuss
14 it.

15 Q. So that the record is clear on this, what I
16 intend to ask Mr. Kelley on this issue is the names of
17 people from the Tobacco Institute who have come to Illinois
18 and conferred with him on specific issues affecting
19 tobacco, and/or have lobbied or testified before
20 legislative agencies or have met with governmental bodies
21 or persons. And if I understand correctly, your position
22 is that you are going to instruct Mr. Kelley not to reveal
23 those things?

24 MS. FINES: Your question as phrased I think is

1 others. And that's what Mr. Trisler's program is under,
2 state activities.

3 Q. Any other people?

4 A. I'm trying to think -- I don't think she's there
5 any more, they have a program that have I worked
6 extensively in for the last two or three years where it's
7 called It's The Law, You Have To Be 18 Years Old To Buy
8 Tobacco. And I'm trying -- Michelle Boise. And that was
9 in her program that they had these kits out where we got
10 them to my distributors who got them to the retailers and
11 put up these signs that say must be 18 years old to buy
12 tobacco products.

13 Q. Is she extraordinarily good lucking?

14 A. I wouldn't know the lady if she walked in here, I
15 only dealt with her on the phone.

16 Q. You missed a real bet, these women they have in
17 these tobacco companies. One of them was a former Miss
18 North Carolina. She was a real knockout.

19 MR. CRIST: Can we have a portion of this
20 transcript. And I -- and while we are here could we take a
21 short break.

22 Q. Sure.

23 (Whereupon a break was taken.)

24 Q. With respect to people from the tobacco industry

1 or the Tobacco Institute; who in the last ten years has
2 come here to actively engage in legislature with respect to
3 issues involving cigarette smoking? Or smokeless tobacco?
4 I thought you were going to instruct him not to answer
5 that.

6 MS. FINES: You're talking generally about
7 persons who have had contact. I will tell you when I'm
8 going to object.

9 Q. I just want to make sure you don't miss it.

10 MS. FINES: I won't. I appreciate it.

11 A. The Tobacco Institute have had a doctor or two,
12 or a couple of people come out here and testify as a
13 witness for the Tobacco Institute. I think they had some
14 out here who worked with us on the Clean Indoor Air Act.
15 Had a couple people come out once -- I'm trying to think of
16 his name in St. Louis, an economist who discussed tax
17 issues and what it meant.

18 Q. Who are the doctors? Do you remember?

19 A. I don't know, but I could get you that
20 information specifically. And I really, Bruce, I can't
21 remember the guys' names.

22 Q. Were they employees of the Tobacco Institute or
23 outside experts, or do you know?

24 A. Could have been both, I don't know. I really --

1 Q. So to your knowledge then directly employees of
2 the Tobacco Institute, have they testified before the
3 legislature, or --

4 A. Let's take Bill Trisler.

5 Q. Okay.

6 A. Who is my immediate contact. Bill has never
7 testified, he doesn't do that.

8 Q. Okay. Is there anybody else who has?

9 A. There's a gentleman by the name of Walker
10 Merryman who has been out here, and he is on the staff out
11 there, has been out here I think and testified maybe once
12 or twice.

13 Q. Okay. What types of matters has he testified
14 on?

15 A. Restrictions of various types, what type of Clean
16 Indoor Air Acts that are out there that are effective and
17 working.

18 Q. What about -- anybody testify about advertising
19 or oppose restrictions on advertising?

20 A. We really haven't led the charge on that.

21 Q. Who has led the charge on it?

22 A. Outdoor advertising companies, ad agencies.

23 Q. I'll bet they do too.

24 A. Now, we have supported their cause, but they are

1 the leaders.

2 Q. Sure. How much money does the Tobacco Institute
3 contribute annually to your Tobacco and Candy Association?

4 MS. FINES: I'm going to object to that question
5 and instruct the witness not to answer it.

6 Q. Would you certify that question, please Miss
7 Reporter.

8 Have the contributions of the Tobacco Institute to
9 your association remained relatively the same over the
10 period of years, or have they increased or decreased?

11 A. Increased slightly.

12 Q. Does the amount of money that Brown and
13 Williamson pay correspond with the amount of money that the
14 Tobacco Institute pays on their market shares?

15 MS. FINES: I object to that question and
16 instruct the witness not to answer.

17 Q. From whom does the tobacco association receive
18 funds from the Tobacco Institute? Who physically signs the
19 check? If one is signed?

20 A. Bruce, I don't know. The check is sent to us, I
21 don't know whether it's got Sam Chilicoth's name on it or
22 the treasurer, but it's made out to the Candy and Tobacco
23 Association.

24 Q Has Mr. Chilicoth come to Illinois?

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1 A. No, sir.

2 Q. Have you been to Mr. Trisler's office in
3 Indianapolis?

4 A. One time I happen to be in Indianapolis as a
5 speaker at a convention, went by and said hi.

6 Q. How many employees would be there?

7 A. Two, he and his secretary.

8 Q. Do you know the Missouri -- your Missouri
9 counterpart?

10 A. Yes.

11 Q. Who is that?

12 A. Pat Blistery, Missouri Association.

13 Q. Does he live in Jefferson City?

14 A. It's a she, I think she lives in St. Louis.

15 Q. Good, I'm glad to hear it?

16 A. And Bruce, it could be Jeff City, I don't know.

17 Q. Your records with respect to your lobbying
18 activities to tobacco and -- would you necessarily have
19 duplicated those for the Tobacco Institute?

20 A. No, sir.

21 Q. Okay. So with respect --

22 A. Well wait a minute, be specific.

23 Q. With respect to I believe you indicated to me
24 that various bills that have come up that affect tobacco --

1 A. I duplicate those and send them to it, sure.
2 That's my job, to keep them informed.

3 Q. Well, see Mr. Kelley, I'm trying to decide how
4 much trouble I'm going to cause you. And since you're
5 Pete's father in law, I will probably cause somebody else
6 some trouble. And I -- if I have alternative sources to
7 getting your records, I will get them somewhere else rather
8 than from you.

9 For example, the amount of money that is contributed
10 to your lobbying effort other than Brown and Williamson, I
11 assume I can find that out from the Tobacco Institute, and
12 so I won't bother you with that. I won't have you come to
13 Belleville. Belleville is nice now, you could see Wayne
14 Weekey. I might make you come anyway, if I can.

15 MS. FINES: Don't you want me to come?

16 Q. I want you to come but you last time you sent
17 Nathan, and Nathan is rather homely.

18 Would you have records, Mr. Kelley, of the names of
19 the legislators whom the Tobacco Institute has made
20 contributions to?

21 A. I haven't kept that because that wasn't my money
22 quote. No, I didn't.

23 Q. Would you have copies of your correspondence to
24 them indicating what legislators do you think that they

1 should contribute to?

2 A. No, that has never been -- it's not done that
3 way, ²Bruce.

4 Q. Done over the phone?

5 A. It is down over the phone or over lunch, you
6 know. And mine are just recommendations.

7 Q. Would members of the tobacco institute come to
8 these fund raisers, or would you just expect checks?

9 A. Sometimes if Mr. Trisler was in town, and he
10 would be the only one, he might go with me to a thing for
11 Jim McPike. In fact he has. His -- maybe I shouldn't say
12 this, but for someone to come out to Washington to go to
13 fund raisers, it doesn't happen, Bruce, here. No.

14 Q. Do you go to fund raisers for congressman?

15 A. Well, since my congressman is Dick Durbin, no. I
16 have been to a fund raiser for Michel because Congressman
17 Michel is a personal friend of my distributor from Peoria.

18 Q. Dick's a marvelous man.

19 A. I love Dick, we just disagree on one major
20 philosophy.

21 Q. He's from East St. Louis, you know?

22 A. He sure is.

23 Q. He went to school with Mr. Nester. High school.

24 A. Believe it or not Dick use to work for me at one

1 time.

2 Q. He has a rather checkered past.

3 MS. FINES: He use to be in this firm.

4 A. He use to be in this firm?

5 MS. FINES: Went a good law school though.

6 A. Georgetown, that's where I knew him, he was in
7 state government at that time. And he worked for the
8 agency.

9 Q. Did you go to Georgetown?

10 MS. FINES: I sure did. They recruited me to
11 play on their basketball team.

12 Q. I'm sure they did. You might have been what,
13 their psychologist or whatever they have at the end of
14 the --

15 A. You're going to have someone at the end of the
16 bench telling them what to say, some of those guys.

17 Q. Would you have records of bills that have been
18 produced in the Illinois legislature for regulations on --
19 or that would tend to regulate or affect the tobacco
20 industry?

21 A. Yes.

22 Q. I would ask that you give me those.

23 MS. FINES: Are you limiting that to a particular
24 period of time or are you --

1 Q. As far back as his records go.

2 A. Can I ask a question.

3 Q. Wait a minute, this is actually between the two
4 of us.

5 MS. FINES: What is your question.

6 (Discussion off the record.)

7 Q. Do you have position papers or publications or
8 writings with respect to the Candy and Tobacco
9 Association's position with respect to those bills?

10 A. No, I have never written a position paper, quote
11 like the trial lawyers do or the med society does. No, I
12 -- now let me clarify this, I send out a memo to my
13 membership that the following bills have been introduced,
14 and then I give them an assessment of what I think is going
15 to happen with it. And I think I started that last year,
16 maybe the year before. But to answer your question as
17 position papers, we don't write one.

18 Q. Do you keep records of your correspondence to and
19 from the Tobacco Institute?

20 A. Uh-huh.

21 Q. How far back do you keep that, Mr. Kelley?

22 A. I think maybe we got it for seven years. I mean,
23 you know, we got a very small office, you try to, you
24 know --

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